

FEDERAL HOUSING FINANCE BOARD

BOARD OF DIRECTORS MEETING

OPEN SESSION

Washington, D.C.

Wednesday, December 12, 2007

ANDERSON COURT REPORTING
706 Duke Street, Suite 100
Alexandria, VA 22314
Phone (703) 519-7180 Fax (703) 519-7190

1 PARTICIPANTS:

2 Board Members

3 RONALD A. ROSENFELD, Chairman

4 ROY BERNARDI, Director

5 GEOFFREY BACINO, Director

6 ALICIA R. CASTANEDA, Director

7 ALLAN I. MENDELOWITZ, Director

8 SHELIA WILLIS, Secretary

9 NEIL CROWLEY

10 STEVE CROSS

11 TOM HEARN

12 * * * * *

13

14

15

16

17

18

19

20

21

22

ANDERSON COURT REPORTING
706 Duke Street, Suite 100
Alexandria, VA 22314
Phone (703) 519-7180 Fax (703) 519-7190

1 P R O C E E D I N G S

2 (10:00 a.m.)

3 CHAIRMAN ROSENFELD: Good morning,
4 everyone. I call this meeting of the board of
5 Directors of the Federal Housing Finance Board to
6 order. Today we will have an open session
7 followed immediately by a closed session where the
8 board will receive updates of Examination and
9 Supervisory findings.

10 We now need to vote to approve the
11 closing of this -- we now need to vote to approve
12 closing the latter portion of today's meeting, as
13 required by the Sunshine Act and Finance Board
14 regulations. And since the closed portion of
15 today's meeting will contain sensitive and
16 confidential bank examination information, I would
17 ask for a motion to seal the transcript for this
18 portion of the meeting.

19 Before I do that, let me welcome Deputy
20 Secretary Bernardi from the Department of Housing and
21 Urban Development, and we appreciate you taking the
22 time from your busy schedule to come over and join

ANDERSON COURT REPORTING
706 Duke Street, Suite 100
Alexandria, VA 22314
Phone (703) 519-7180 Fax (703) 519-7190

1 us today. We're voting on a New York matter which
2 should be close to home, and I know you have a
3 keen interest in it.

4 DIRECTOR BERNARDI: Thank you, Mr.
5 Chairman. It's nice to be with you all.

6 CHAIRMAN ROSENFELD: Director Bacino?

7 DIRECTOR BACINO: Mr. Chairman, I move
8 to close the portion of today's meeting at which
9 we will receive updates of examination and
10 supervisory findings. It's further to be
11 determined that the record and transcript of this
12 closed portion of the meeting be kept
13 confidential.

14 CHAIRMAN ROSENFELD: Thank you for the
15 motions. Is there any discussion? Any
16 discussion?

17 (No response)

18 CHAIRMAN ROSENFELD: Do we have a
19 second?

20 DIRECTOR CASTANEDA: Second.

21 CHAIRMAN ROSENFELD: Thank you, Director
22 Castaneda. Will the Secretary please call the roll?

1 MS. WILLIS: On the item before the
2 board, Director Bacino, how do you vote?

3 DIRECTOR BACINO: Yes.

4 MS. WILLIS: Director Castaneda?

5 DIRECTOR CASTANEDA: Yes.

6 MS. WILLIS: Director Mendelowitz?

7 DIRECTOR MENDELOWITZ: Yes.

8 MS. WILLIS: Director Bernardi?

9 DIRECTOR BERNARDI: Yes.

10 MS. WILLIS: Chairman Rosenfeld?

11 CHAIRMAN ROSENFELD: Yes. The motion is
12 carried, and the subsequent portion of our meeting
13 will be closed, and the transcript will remain
14 closed and confidential. Thank you.

15 Now, let us turn to the public portion
16 of today's meeting. We will be considering a
17 request by the Federal Home Loan Bank of New York,
18 who amends its previously-approved capital
19 structure plan.

20 Tom, you're making a presentation?

21 MR. HEARN: Yes, I am.

22 CHAIRMAN ROSENFELD: Thank you, go

1 ahead.

2 MR. HEARN: Good morning, Mr. Chairman,
3 and members of the board. I would like to
4 describe to you the issues related to the sole
5 matter before you today, the approval of
6 amendments to the New York bank's capital plan.
7 Each bank is required to have in place a capital
8 structure plan that sets out how the bank will
9 comply with capital requirements established by
10 the Federal Home Loan Bank Act and Finance Board
11 regulations. Each plan and any amendments to a
12 plan must be adopted by the bank's Board of
13 Directors and approved by the Finance Board's
14 Board of Directors.

15 The Finance Board has approved a capital
16 plan for the New York bank on July the 18th, 2002,
17 and an amendment to that plan on June the 8th,
18 2005. The bank now seeks Finance Board approval
19 for the additional amendments to the plan. The
20 amendments fall into two groups. The first group
21 deals with how the bank treats membership stock
22 held by an entity whose membership in the bank

1 terminates because it merges with a nonmember, and
2 because that the merger ceases to exist as a
3 corporate entity.

4 Under the New York bank's current plan,
5 the bank satisfies the overall capital
6 requirements by issuing to its members Class B
7 stock. Each member is required to own stock to
8 satisfy two parts of the stock requirement, one
9 related to -- called membership stock, which is a
10 percentage of a member's mortgage-related assets,
11 and the other called activity stock, which is a
12 percentage of outstanding activity such as
13 advances that the member has with the bank.

14 The bank may redeem Class B stock only
15 after the expiration of a five-year period that
16 commenced with the member's submission of a notice
17 of intent to redeem the share. The member may
18 also repurchase Class B stock prior to the running
19 of that period provided that the stock is excess
20 to the member's stock purchase requirement.

21 At issue in the New York bank's first
22 set of proposals today for proposed amendments is a

1 prohibition in the Bank Act and Finance Board
2 regulation that prohibits a bank from deeming a
3 share of stock to be excess and as subject to
4 repurchase before the five-year redemption period
5 running "...by virtue of the member's submission
6 of a notice of intent to withdraw from membership
7 or termination of membership in any other manner."

8 For stock that is required to satisfy a
9 requirement linked to membership, the statutory
10 prohibition means the Class B stock held by the
11 member that files a Notice of Withdrawal or
12 relocates outside the bank's district does not
13 automatically become excess stock because of that
14 event.

15 In 2001 questions arose about whether
16 membership stock may be considered excess whenever
17 a member merges into a nonmember and merges out of
18 existence as a result of that merger. By
19 considering such stock excess, a bank would have
20 the discretion but not the requirement to
21 repurchase such stock before the running of the
22 five-year redemption period. The purchasing such

1 stock from a former member is important to the New
2 York bank, and other banks I believe, because the
3 dividends paid on stock owned by a former member
4 dilutes the per share dividend paid to current
5 members of the bank. Thus the bank has an
6 interest in repurchasing former member stock when
7 it can be done so without negative effect on the
8 bank's capital adequacy.

9 The Finance Board, Board of Directors,
10 responded to this question about merged-out member
11 stock in an August 2001 proposal to amend its
12 capital requirements. In that preamble, the
13 Finance Board advised the banks that while
14 termination of membership for such an entity could
15 not in and of itself cause membership stock to be
16 deemed excess, as a practical matter when a bank
17 recalculates the membership requirement, an amount
18 based on a percentage of certain assets for a
19 merged-out members that ceases to exist as a
20 corporate entity, that calculation could result in
21 a zero requirement for the entity that no longer
22 existed.

1 The Finance Board advised the bank that
2 because a bank can only recalculate membership
3 under conditions set forth in its plan, the bank
4 wishing to provide itself with the flexibility to
5 recalculate membership requirements more
6 frequently than annually, such as upon the
7 completion of a merger, would have to include in
8 its capital plan a provision allowing for more
9 frequent calculation of the membership stock
10 purchase requirement.

11 The New York bank is proposing to amend
12 its capital plan to make clear that if a member
13 terminates the membership as a result of a merge
14 into a nonmember, the bank has the discretion --
15 but again not the requirement -- to recalculate
16 such an entity's membership requirement at any
17 time after 30 days subsequent to the merger and
18 use zero values for the entity's mortgage-related
19 assets which will result in a calculation of zero
20 membership stock requirement.

21 Keep in mind that if such an entity has
22 outstanding activity advances with the bank, the

1 stock requirement to support that activity could
2 not become excess and therefore repurchased until
3 such activity was wound down.

4 The Finance Board staff and the Office
5 of General Counsel and Office of Supervision
6 believe that this amendment is permitted under the
7 Bank Act and Finance Board regulations and poses
8 no safety and soundness concern to the bank or to
9 the bank system as a whole.

10 The second amendment the bank is
11 proposing today for your approval is to amend the
12 definition of "advance agreement" in the capital
13 plan to make clear that it includes advances to
14 life insurance company members that are documented
15 as transactions known in the life insurance
16 industry as a Funding Agreement. The substance of
17 this agreement -- of this amendment does not raise
18 legal or policy concerns. Many life insurance
19 company members in the bank system prefer to
20 document advances from the bank as a funding
21 agreement, which is an investment product that
22 they issue to investors in order to raise funds on

1 which they earn an arbitrage spread.

2 Deeming such funding agreement advances
3 to insurance company members, or making clear in
4 the bank's capital plan that the term "advances"
5 includes such transaction, again raises no legal
6 or policy concerns. Based on that, the staff in
7 the Office of General Counsel and Office of
8 Supervision recommend that the capital plan
9 amendments before you be approved.

10 CHAIRMAN ROSENFELD: Thank you. Any
11 board members have any comments?

12 DIRECTOR CASTANEDA: I do have a
13 question, if I may. Tom -- I only have one
14 question, and I think you answered it in your
15 presentation. With [sic] this proposed change,
16 merely give the New York bank the ability to
17 handle these types of situations? And I'm going
18 to assume that this happen from time to time in
19 other districts in the same manner as the other
20 banks already do, and, if so, have there been any
21 issues with the way those other banks will handle
22 those cases? Are you following me?

1 MR. HEARN: Yes, I understand your
2 question. I'm not aware of any other issues
3 arising. I was curious about this very same
4 matter, and so I had our staff query, OS staff,
5 query the membership database just to see how
6 often this kind of thing goes on.

7 DIRECTOR CASTANEDA: Um-hmm.

8 MR. HEARN: And it appears that in 2007,
9 calendar year 2007, there have been 212 members
10 that have merged out of membership, and about 149
11 of those are because they merged into a member of
12 another bank, creating this very scenario.

13 If you extrapolate that back to 2002
14 when these new capital plans first started, there
15 could be several hundred of these situations. And
16 I'm not aware of it ever raising a question.

17 DIRECTOR CASTANEDA: All right. Thank
18 you.

19 CHAIRMAN ROSENFELD: Director
20 Mendelowitz?

21 DIRECTOR MENDELOWITZ: Thanks, and I
22 appreciate the presentation. I just wanted for my

1 own benefit a little clarification.

2 The first is if a merged member still
3 has outstanding advances, would it, theoretically,
4 if they recomputed the membership requirement,
5 would the membership stock requirement go away but
6 still have an activity-base requirement
7 outstanding?

8 MR. HEARN: I think I understand your
9 question. I believe that if there is still -- I'd
10 have to look at the regulations and get back to
11 you -- but I think that if there is still a
12 outstanding activity, and in the case of a
13 merged-out member it's because the outstanding
14 advances have been transferred to the acquiring
15 entity. In that instance, I don't know offhand if
16 the four-square provisions of the Bank Act and
17 regulations would allow excess stock to be reduced
18 to zero and therefore -- the requirement to be
19 reduced to zero and then repurchased at the bank's
20 discretion.

21 DIRECTOR MENDELOWITZ: Um-hmm.

22 MR. CROWLEY: Director Mendelowitz, I

1 think this is going to depend in part on the
2 capital plan of each of the bank, or the
3 particular bank, of which -- to which the member
4 belongs. Some of the banks have stock purchase
5 requirements that are the greater of, in other
6 words greater of the membership or the activity,
7 and others have them their additive where there's
8 a membership and then a separate activity.

9 I believe that in the case of an
10 institution that is merged out of existence the
11 bank is within its right to keep all the stock
12 until all of the advances are paid off, even if as
13 part of the next annual calculation of membership
14 stock, the stock is excess. That simply gives the
15 bank the discretion to repurchase it; it does not
16 require the bank to repurchase it, and I think
17 that the banks would perhaps be more likely to
18 hold all of the stock until all of the advances
19 have been paid off.

20 DIRECTOR MENDELOWITZ: Yeah, and I have
21 to say there's a policy as a (matter, I think
22 that makes sense. I think that makes sense

1 because the stock of the member is part of what
2 assured the safety and soundness and repayment of the
3 advance. And I think that because there's some
4 ambiguity here, maybe it would be worth while
5 providing some guidance to the banks that while
6 this change in the capital rule in the approval in
7 the case of New York permits a recalculation that
8 makes the membership stock, basically, excess. It
9 does not seem to me to be wise to exercise the
10 option to repurchase it as long as there are
11 advances outstanding.

12 MR. CROWLEY: I don't know exactly how
13 -- as Tom indicated, there are a hundred or more
14 mergers over the course of the year -- I don't
15 know how the banks have handled them other than to
16 say I've never had an inquiry from our examination
17 staff or from the banks where this has caused any
18 sort of a concern for anybody.

19 DIRECTOR MENDELOWITZ: Right, but we
20 have a change in the capital rule now that raises
21 that possibility.

22 MR. CROWLEY: Well, this is just the

1 capital plan for the New York bank. We're not
2 changing --

3 DIRECTOR MENDELOWITZ: No, not the
4 capital but the New York capital plan.

5 Secondly, I just wanted to clarify my
6 understanding that this change that we're
7 approving creates no right for members to redeem
8 stock early in contravention of the five-year
9 tenure associated with the GLB capital.

10

11 MR. CROWLEY: That's correct.

12 MR. HEARN: I believe that's correct.

13 DIRECTOR MENDELOWITZ: Right.

14 MR. HEARN: It merely gives the bank the
15 discretion --

16 DIRECTOR MENDELOWITZ: It gives the bank
17 the discretion, and if it is in the interest of
18 the bank to repurchase the stock early, which
19 means before five years are up, the bank may do
20 so, but there's no requirement, and the member
21 gets no new rights to redeem the stock earlier
22 than the five years provided in the statute.

1 MR. HEARN: That is the way this
2 amendment is drafted, yes.

3 DIRECTOR MENDELOWITZ: Thank you.

4 CHAIRMAN ROSENFELD: Okay, if there's --

5 DIRECTOR BACINO: Just one quick
6 question. And, Tom, I think you've pretty much
7 clarified this second amendment, what we're
8 talking about is more of a terminology, the change
9 for those companies?

10 MR. HEARN: Yes. It makes clear what,
11 arguably, is already in the plan itself.

12 DIRECTOR BACINO: Okay, thank you.

13 CHAIRMAN ROSENFELD: If there's nothing
14 else, then, I'll set the motion to approve the
15 amendment to the bank's capital structure plan.

16 DIRECTOR BACINO: So moved.

17 CHAIRMAN ROSENFELD: Is there a second?

18 DIRECTOR CASTANEDA: Second.

19 CHAIRMAN ROSENFELD: Please call the
20 roll.

21 MS. WILLIS: On the item before the
22 board, Director Bacino, how do you vote?

1 DIRECTOR BACINO: Yes.

2 MS. WILLIS: Director Castaneda?

3 DIRECTOR CASTANEDA: Yes.

4 MS. WILLIS: Director Mendelowitz?

5 DIRECTOR MENDELOWITZ: Yes.

6 MS. WILLIS: Director Bernardi?

7 DIRECTOR BERNARDI: Yes.

8 MS. WILLIS: Chairman Rosenfeld?

9 CHAIRMAN ROSENFELD: Yes. The motion's

10 adopted. This ends the open session of the

11 meeting. We will reconvene in closed session in

12 one minute.

13 (Whereupon, at 10:13 a.m., the

14 PROCEEDINGS were adjourned.)

15 * * * * *

16

17

18

19

20

21

22